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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/822,085  | 04/09/2004  | Joseph Rissin        |                     | 2189             |
| 7590  | 09/28/2005  |                      | EXAMINER            |                  |
| Stephen E. Feldman, P.C.<br>12 East 41st Street<br>New York, NY 10017 |             |                      |                     | LAVINDER, JACK W |
|   |             | ART UNIT             |                     | PAPER NUMBER     |
|   |             | 3677                 |                     |                  |

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                              |                  |
|------------------------------|------------------------------|------------------|
| <b>Office Action Summary</b> | Application No.              | Applicant(s)     |
|                              | 10/822,085                   | RISSIN ET AL.    |
|                              | Examiner<br>Jack W. Lavinder | Art Unit<br>3677 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/9/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

1. Claims 13, 14, 16, 17 have been objected to because of the following informalities: these claims are duplicate of claims 7 and 8. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 15 has been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "an internal engagement passage, of a second width greater than the first width" is not accurate. The disclosure states that the width of the internal passage is less than the width of the opening in the base plate. For examination purposes, the limitations is assumed to mean that the width of the internal passage is less than the width of the opening in the base plate

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 5, 8, 14, 15, and 17 have been rejected under 35 U.S.C. 102(b) as being anticipated by Burkett, 4630453.

Regarding claim 1, Burkett discloses a securing clutch (figure 7) comprising a flexible rubber material retainer (16) with an engagement passage (17) and a metal frame (4) with handles (5) surrounding the retainer.

Regarding claim 2, Burkett discloses a decorative face (earring, paragraph 1, column 1) with a post (8), wherein the post diameter is slightly larger than the engagement passage (col. 1, lines 35-40 and col. 2, lines 30-35).

Regarding claim 4, Burkett discloses an open back end (figure 7).

Re claim 5, Burkett discloses the flexible material retainer (16) shaped like a rivet, i.e., it has a thickness like a rivet (broadest reasonable interpretation, since rivet come in a variety of shapes and sizes).

Re claims 8, 14 and 17, Burkett discloses that the retainer is made from rubber (col. 4, line 15).

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8, 13, 14, 16 and 17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Seidman, 4843699 in view of Burkett.

Re Claim 1, Seidman discloses a securing clutch (16) comprising a flexible polyurethane material retainer (28, col. 3, line 36) with an engagement passage (32) and a metal frame (20) surrounding the retainer. Seidman fails to disclose handles at the back end of the metal frame.

Burkett discloses handles (5) for increasing the gripability of the securing clutch to improve the ease of releasing the clutch from the post (col. 3, line 66).

It would have been obvious to a person having ordinary skill in the art to modify Seidmans frame to include handles to improve the ease of releasing the clutch from the post of the earring.

Re claim 2, Seidman discloses a decorative face (10) and a post (12) having a diameter slightly greater than the diameter of the engagement passage (32). Seidman discusses that frictional engagement between the post (12) and the urethane elastomer (28) is the means for holding the clutch onto the post. This implies that the post must have a diameter slightly larger than the diameter of the aperture (32) in order for frictional engagement to occur.

Re claim 3, figure 5 of Seidman discloses a closed back end of the engagement hole.

Re claim 4, figure 2 of Seidman discloses an open back end of the engagement hole.

Re claim 5, Seidman discloses a flexible material retainer shaped like a rivet (figure 2).

Re claim 6, Seidman discloses a front end with a cylindrical protrusion (30).

Re claims 7, 13 and 16, Seidman discloses a retainer made from a polyurethane material (28, col. 3, line 36).

Re claims 8, 14, and 17, Seidman discloses a retainer made from a polyurethane material (28) but fails to disclose the use of rubber to make the retainer. Burkett discloses that the retainer is made from rubber (col. 4, line 15).

It would have been obvious design choice to a person having ordinary skill in the art to use rubber in place of the urethane since they both perform the identical function of retaining the post in the clutch by friction equally as well as the other to maintain the post engagement with the clutch.

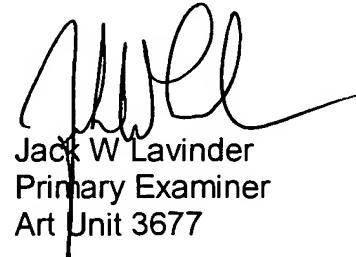
***Allowable Subject Matter***

8. Claims 9-12 have been allowed.
9. Claim 18 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W Lavinder  
Primary Examiner  
Art Unit 3677

9/26/05